



RECORD OF DECISION

OCRM's Review of Amendments to the Alaska Coastal Management Program

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National Oceanic and Atmospheric Administration
National Ocean Service
Office of Ocean and Coastal Resource Management

RECORD OF DECISION

Approval of Amendments to the Alaska Coastal Management Program

DECISION TO BE MADE

This Record of Decision (ROD) documents the Office of Ocean and Coastal Resource Management (OCRM) decision to approve amendments to the State of Alaska's federally-approved coastal management program, submitted to OCRM by Alaska on June 2, 2005. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended, and OCRM regulations on amendments to approved state coastal zone management programs (15 C.F.R. part 923, subpart H), states must submit changes to their programs and their enforceable policies to OCRM for approval. This decision allows Alaska to continue its certification as a federally-approved coastal management program, receive CZMA funds to implement its program, as revised by the amendments, and conduct federal consistency reviews based on the revised program policies and guidance. The changes to the Alaska Coastal Management Program (ACMP) will improve the State's consistency review process both in timing and predictability by reducing duplication of permit review through broadly defined statewide standards, revised roles for district governments in the permitting process, and implementing a streamlined consistency review process for certain activities.

OCRM issues this ROD in compliance with agency decision-making requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations at 40 C.F.R. parts 1500-1508, the National Oceanic and Atmospheric Administration's (NOAA) NEPA implementing procedures found at NOAA Administrative Order (NAO) 216-6, Section 7 of the Endangered Species Act (ESA) the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation Management Act (MSFCMA), and other relevant federal laws. This decision is based upon the analysis included within the final Environmental Impact Statement (EIS) for OCRM Approval of Amendments to the State of Alaska's CMP, issued November 25, 2005.

This ROD: a) identifies the alternatives considered in reaching the decision; b) identifies the environmentally preferred alternative; c) states OCRM's decision and presents the rationale for its decision; and d) states whether all practicable means to avoid or minimize

environmental harm from implementation of the selected alternative have been adopted. See 40 C.F.R. 1505.2.

INTRODUCTION

The final EIS analyzes possible biologic and socioeconomic impacts to the human environment from the implementation of several changes to Alaska's coastal standards, federal and State consistency processes, and implementation of the program at State and district levels. These include incorporation of Executive Order 106, House Bills 191, 69, and 86, Senate Bill 102, revision to State statute AS 46, and new implementing regulations at 11 AAC 110, 11 AAC 112, and 11 AAC 114. OCRM's proposed action is review and approval of Alaska's amendments to its federally-approved CMP, which will (1) result in continued federal funding to implement the revised program, and (2) allow the State to use the revised ACMP enforceable policies when conducting federal consistency review of activities either in the coastal zone or having impacts on coastal resources. OCRM must make a determination that the ACMP, as amended by EO 106, HBs 191, 69, and 86, SB 102, and the new and revised regulations, will still meet the substantive requirements of the CZMA in five categories: uses subject to management special management areas, boundaries, authorities and organization, and coordination, public involvement, and national interest. See 15 C.F.R. part 923, subparts B through F. In accordance with amendment procedures at 15 C.F.R. part 923, subpart H, OCRM must assess the environmental impacts of OCRM's approval of the proposed amendment in order to satisfy the requirements of NEPA. In addition, OCRM has made a Finding of Approvability, which provides an analysis of approvability of these changes (see Attachment 1).

The purpose of OCRM's action is to allow Alaska to continue its certification as a federally-approved CMP. If Alaska's CMP, as amended, satisfies the applicable program approval criteria of CZMA section 306(d) and 15 C.F.R. part 923, subparts B through F, then the State would continue to receive CZMA funds to implement the revised program, and conduct federal consistency reviews based on the revised ACMP enforceable policies. OCRM determined that Alaska's proposed changes to the State's CMP represented a substantial change to three of the five program approval areas listed above: (1) uses subject to management; (2) authorities and organization; and (3) coordination, public involvement, and national interest. In addition, OCRM found Alaska's program changes to be substantial, both in terms of the revisions in the way the State is managing the uses and resources, and because the scope of the changes represents one of the most comprehensive changes to a state coastal program in the history of the CZMA.

The proposed action is needed to bring the revised ACMP into compliance with the requirements of the CZMA. If Alaska did not submit the State legislation and regulations amending its CMP to OCRM for review and approval, or OCRM did not find the changes to the ACMP in compliance with the CZMA, then the ACMP would be found to be out of compliance with the CZMA, and the State would lose its federal certification. The result would be (1) the loss of approximately \$2.5 million federal (and approximately \$2 million in state match) annually to Alaska for implementation of its CMP, and (2) the

State would no longer be able to apply State coastal standards and district policies to federal, federal assistance, or federal license or permit activities affecting Alaska's coastal uses or resources. These coastal standards and policies allow the State and districts to review federal agency activities, federal license or permit activities and federal assistance activities for consistency with State and district standards and policies. This is particularly critical in Alaska, where 60 percent of the land is owned by the federal government, and many federal activities, such as mining and timber operations have the potential to adversely impact coastal uses and resources.

The draft EIS for this action was published on September 23, 2005 for a 45-day public review period. 70 Fed. Reg. 55835. Public comments received on the draft EIS included preference for different and additional alternatives; opinions on various issues, including effects of changes to habitat standards, subsistence uses and resources, consistency review requirements, and changes to district plan requirements; and, environmental justice issues associated with the changes to the ACMP. Specific comments were identified and read by OCRM staff, who provided both individual responses and combined responses where the comments were substantively similar. These comments and their associated responses are provided in Appendix F of the final EIS Volume 1. The final EIS incorporates revisions based on public comments to the draft EIS.

The notice of availability of the final EIS was published on November 25, 2005 for a 30-day public review period. 70 Fed. Reg. 71139. OCRM received only two comments on the final EIS; one from the U.S. Environmental Protection Agency (EPA), and one from Representative Beth Kerttula of the Alaska State Legislature District 3. OCRM did not make any changes to the final EIS based on these comments; however additional information requested by EPA has been incorporated into this ROD.

DESCRIPTION OF ALTERNATIVES

The EIS addressed three action alternatives, including the proposed action and the no-action alternative. The alternatives selected for detailed analysis represent different management responses available to OCRM under the CZMA to the program amendment submitted by Alaska. Each of the alternatives has varying degrees of environmental impacts to the human environment. The differences among the alternatives arise from (1) the type of management framework; and (2) the State's continued participation in the federal coastal management program. The predicted outcomes from implementing each of the alternatives are described in Section 7 of the final EIS. Each alternative is likely to have some negative environmental and socio-economic impacts associated with its implementation, as compared to the current program. However, OCRM is constrained by the CZMA in its ability to require the State to adopt more protective legislation, or implement the ACMP in a method that would otherwise address some of these impacts. OCRM must evaluate the program change that is provided by Alaska. If OCRM finds that the amendments to the ACMP meet the program approvability criteria of the CZMA (15 C.F.R. part 923, subparts B through F), then OCRM must issue a finding of approvability.

Alternative 1 (Preferred Alternative) is to approve Alaska's request to incorporate EO 106, HBs 191, 69, and 86, SB 102, revisions to State statute AS 46, and regulations at 11 AAC 110, 11 AAC 112, and 11 AAC 114 as a program amendment to the ACMP.

Alternative 2 represents the "no action" alternative, where OCRM would fail to approve Alaska's program amendment request before January 1, 2006. Under the CZMA, if OCRM did not act on Alaska's proposed amendment to the State CMP, the State could eventually presume concurrence. However, Alaska has enacted State legislation that will repeal the ACMP if OCRM does not approve the program change request before January 1, 2006. Therefore, the result of OCRM's failure to approve the program amendment would not result in presumed concurrence, but in the repeal and termination of the ACMP. Alternative 3 is to deny Alaska's request to incorporate the proposed program amendment as part of the State's federally-approved program. Based on the State's newly-enacted legislation, OCRM's selection of Alternative 3 would result in the same set of impacts as the "no action" alternative; repeal and termination of the ACMP.

OCRM considered public input in the development of these alternatives. Public testimony was invited on the issues and alternatives that should be considered in the EIS. OCRM received 22 sets of comments during the scoping process on issues to be included in the EIS, however, the comments focused on impacts of the State's program change, and did not include suggestions for possible alternatives. The resulting alternatives were analyzed in the draft EIS, published on September 23, 2005. The final EIS did not analyze any other alternatives. However, OCRM did respond to public comments received on the draft EIS regarding other possible alternatives that were not analyzed. A discussion of the other possible alternatives that OCRM did not analyze in detail is provided below.

A. Alternative 1 (Preferred Alternative—Approve Alaska's Request for Amendment of the ACMP)

Alternative 1 is to approve Alaska's request to incorporate the new statutes and new and revised regulations submitted to OCRM on June 5, 2005 into the ACMP. Under Alternative 1, the revised ACMP would be implemented as the State's new federally-approved CMP, and the State would continue to receive federal funding to implement the program. In addition, the new statutes and regulations would become the federally-approved authorities which Alaska would use to apply federal consistency. The changes to the State's CMP, which OCRM would be approving, have resulted in a shift in implementation of the ACMP from State and district plan implementation to primarily State implementation. The result is a revision to the overall management of the ACMP, and a significantly revised role for districts in reviewing activities in the State's coastal zone for impacts and consistency with district plan policies. Other changes that would be federally-approved under Alternative 1 include revisions to the State's coastal standards, the exemption of certain activities from the State's consistency review process, and limitations on parties with standing to file legal claims challenging ACMP consistency decisions.

B. Alternative 2 (No Action—Failure to Approve Alaska’s Request for Amendment of the ACMP)

Alternative 2 is for OCRM to fail to act on Alaska’s request for incorporation of the program changes into its federally-approved coastal management program. The “no action” alternative is the most likely outcome that can be expected to occur in the absence of agency action, and is described for comparison with the proposed action and any alternatives. Typically, under the CZMA, if OCRM did not act on Alaska’s proposed amendment to its coastal management plan, the amendment would eventually be conclusively presumed as approved under 16 USC 1455(e)(2). In this case, however, Alaska has enacted a statute which will repeal the ACMP if OCRM does not approve the proposed amendment before January 1, 2006. Alaska statute SB 102, section 22 contains language that repeals the ACMP effective July 1, 2010. However, if the revised coastal management program has not been approved by OCRM under the CZMA before January 1, 2006, the repeal of the ACMP takes effect on May 20, 2006. Alaska could, of course, consider changing its laws at any time during the next regularly scheduled legislative session (January 2006—May 2006), but given existing law, the most likely outcome if OCRM failed to act before January 1, 2006, is the repeal and termination of the ACMP.

Repeal and termination of the ACMP would result in an unenforceable program under the CZMA, lead to State withdrawal from the national coastal management program, and have serious repercussions to not only the national program, but to Alaska state agencies, districts, and local communities without land use planning authorities within Alaska’s coastal zone.

C. Alternative 3 (Deny Alaska’s Request for Amendment of the ACMP)

Alternative 3 is for OCRM to deny Alaska’s request for incorporation of the program changes to its federally-approved coastal management program. Under the CZMA, OCRM can only approve or deny proposed amendments, depending on whether the requirements of the CZMA are satisfied. 15 C.F.R. 923.80. Alaska’s request to incorporate the new and revised laws and regulations was processed as an amendment to the ACMP because it was considered to be a substantial change to several aspects of the State’s program, including uses subject to management; authorities and organization; and coordination, public involvement, and the national interest. OCRM had to determine whether the State would still meet the requirements of the CZMA. Several concerns were raised by the public during the program change request process, including the limitation of the ACMP’s effectiveness due to changes to district participation in oversight of locally important resources; elimination of federal consistency review requirements for some shallow gas and coal bed methane activities and listing additional activities under the State’s generally consistent project categories; changing the consistency review process for Alaska Department of Environmental Conservation activities, and centralizing all district plan and State standards and appeals decisions within DNR by eliminating the Coastal Policy Council.

If the amendment to the ACMP failed to meet the requirements of the CZMA, OCRM would deny approval of the State's request to incorporate the new statutes and new and revised regulations into the ACMP. Due to Alaska's enactment of SB 102 (discussed above), the result of selecting this alternative would lead to the same results as Alternative 2: the repeal and termination of the ACMP. The advantages of participation in the federal program would not be available to the State, including a comprehensive CMP with district participation, federal funding, and federal consistency.

D. Alternatives Proposed During Public Comment Period on Draft EIS and OCRM's Response

Several commenters suggested that OCRM should consider one or more additional alternatives that included either partial approval or modification to the ACMP that had not been submitted by the State. Examples included restoration of district control or a stronger district role in implementation of the ACMP, different habitat standards, improved district plan guidance, etc. However, OCRM is unable to issue partial approval of the program amendment package submitted by the State, provided those elements submitted meet the program approval requirements of the CZMA. For example, under the CZMA, a state determines how much authority it wants to give local governments. CZMA section 306(d)(11). OCRM has no authority to require a State to provide greater local authority. A state meets the program approval requirements in CZMA section 306(d), either by state authority only, or through some combination of state and local authority that the state determines. On June 23, 2005, OCRM issued a preliminary determination that Alaska's program change submission met the requirements of CZMA section 306(d).

In making its determination on the alternatives to review in detail, OCRM was aware that there are any number of policy choices Alaska could have made in designing the ACMP. In fact, the proposed amendment before OCRM was a result of the State's deliberate policy choice to amend the ACMP. Since OCRM does not have the authority to partially or conditionally approve proposed amendments that meet the requirements of the CZMA, and because the EIS analyzed a reasonable range of alternatives, OCRM limited the number of alternatives to those considered reasonable and practicable based on the given circumstances.

THE ENVIRONMENTALLY PREFERABLE ALTERNATIVE

As required by the CEQ's NEPA implementing regulations, OCRM must identify an environmentally preferable alternative based on its review of the NEPA analyses and other applicable analyses. 40 C.F.R. part 1505.2(b). The environmentally preferred alternative is the alternative that results in the least damage to the biological and physical environment, and that best protects, preserves, and enhances historic, cultural, and natural resources. Although NEPA regulations require the identification of an environmentally preferred alternative, the regulations do not require the selection of this alternative. As provided in the regulations, the agency may take other factors into consideration when arriving at a decision on which alternative is implemented. The EIS analyzed the effects

of the ACMP on the human, natural and built environment in the Alaska coastal area for each of these alternatives.

Based on a comparison of effects, Alternative 1 (Proposed Action) is the Environmentally Preferable Alternative because it is estimated to have, among the three alternatives considered, the most beneficial or least adverse effect on biological resources and the sociological environment in terms of the State's continued participation in the federal coastal management program. The primary differences would be the continuation of (1) the ACMP, which implements the State's coastal standards, and (2) the opportunity for district governments to participate in coastal management, including those districts that otherwise would lack any local zoning ordinances. Also, under Alternative 1, State and district governments retain the ability to review federal agency activities, federal license or permit activities, and federal assistance activities affecting coastal resources or uses for consistency with State standards and district policies. Finally, Alaska is likely to continue receiving \$2.5 million annually under the CZMA to implement its federally-approved CMP, which to date has been shared with the districts.

As the analysis in Section 7 of the final EIS indicates, the majority of the changes proposed under the ACMP's program amendment are likely to result in neutral effects to the physical environment, and OCRM's selection of Alternative 1 is unlikely to result in either positive or negative effects on the physical environment. In large part this is due to the nature of the program change, which represents a shift in the ACMP from State and district plan implementation to primarily State implementation applying State standards and State law. In response to legislative mandates, the State's coastal standards were rewritten to avoid redundancy with other State statutes, regulations, and programs. Most changes were made to the State's standards for clarification purposes and to set management guidelines and compliance standards.

The final EIS does identify potential impacts associated with Alternative 1 to subsistence resources, which may receive a reduced level of identification, priority, and protection by the State and districts under the new standards and guidance on district plans. Coincidentally, selection of Alternative 1 could result in negative socio-economic impacts to Alaska's districts and the large number of minority and lower income population that are represented in the districts who rely on subsistence resources.

However, due to Alaska's adoption of SB 102, selection of either Alternative 2 or 3 would result in comparatively more severe negative effects for both physical and socio-economic resources. Should OCRM either fail to approve the State's program amendment or deny approval by no later than January 1, 2006, the ACMP would be repealed, and terminated effective May 20, 2006. The State would no longer have statewide coastal standards, and it likely that the ACMP's coordinating and over-arching structure for addressing federal and state activities in Alaska's coastal would cease to exist. Both the State and districts would lose the opportunity to participate in the federal consistency review process for federal agency activities, federal license or permit activities, and federal assistance activities with impacts on Alaska's coastal uses or resources. While adoption of Alternative 1 would represent OCRM approving and

funding a significant change in the districts' role in this review process, the districts' access to this level of participation has been retained. It is unlikely that federal agencies, in the absence of the ACMP, would continue to review their activities for consistency with Alaska state coastal standards and district policies. At a minimum, under Alternatives 2 and 3, Alaska would lose all benefits associated with the participation in the national CMP, while under Alternative 1, these benefits would be retained.

OCRM DECISION AND FACTORS CONSIDERED IN THE DECISION

In addition to identifying the environmentally preferred alternative, NEPA regulations require agencies to state in the ROD the decision that was made and how the decision was affected by the preferences among all the alternatives based on relevant factors (including economic and technical considerations and agency statutory missions). 40 C.F.R. part 1505.2(a)(b). OCRM's decision is based on which alternative it believes will best fulfill the purpose and need for the Proposed Action. In this case, OCRM's decision is the same as the Environmentally Preferable Alternative. However, OCRM has taken into consideration various other considerations in choosing its Preferred Alternative, including the agency's statutory mission and responsibilities and economic, environmental, and social factors.

A. OCRM's Decision

Approval of Alaska's request to incorporate the various new State statutes and regulations identified above as a program amendment would ensure Alaska's continued participation as a federally-approved coastal management program. The proposed action and other alternatives have been described and evaluated in the EIS. Based upon the review of the alternatives and their environmental consequences described in the EIS as required under NEPA, and satisfaction of requirements under the Endangered Species Act (ESA) and the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA), as well as the attached Finding of Approvability, OCRM has decided to approve Executive Order 106, House Bills 191, 69, and 86, Senate Bill 102, revision to State statute AS 46, and new implementing regulations at 11 AAC 110, 11 AAC 112, and 11 AAC 114 as an amendment to the Alaska Coastal Management Program. OCRM arrived at this decision while taking environmental, economic, and agency statutory mission considerations into account, as discussed in greater detail in the following subsection and in Section 10 of the final EIS.

OCRM has complied with the ESA Section 7 consultation requirements, (*see* Biological Effects Evaluation. Appendix G), and the MSFCMA Essential Fish Habitat consultation requirement, (*see* Appendix H, EFH Assessment, Attachment 2), which is incorporated here by reference. With respect to Endangered Species Act requirements, OCRM has concluded, and the U.S. Fish and Wildlife Service and NMFS have concurred, that the approval of the ACMP program amendment is not likely to adversely affect listed species or designated critical habitat. With respect to EFH, OCRM has determined that, depending on how the proposed amendments to the ACMP are implemented, the amendments could potentially result in some adverse effects to EFH, but such effects are

not inevitable, and the amendments could result in no change to the level of environmental protection of EFH. NMFS has reviewed the EFH Assessment and commented without recommendations.

B. Factors Considered in the Decision

OCRM's authority relevant to the decision extends to either approving the program change as an amendment to the ACMP or denial to do so. In reaching this decision, OCRM is required to "identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision." 40 C.F.R. 1505.2(b); NAO 216-6 Section 4.01.t (May 20, 1999).

Based on the analysis provided in the EIS and the attached Finding of Approvability, the following factors weighed most heavily in OCRM's decision: (1) continued ACMP approvability as amended by the proposed program change; and (2) impacts to coastal resources and communities associated with the continued existence of the ACMP. OCRM has one primary mandate with regard to this Proposed Action: review and determine whether Alaska's federally-approved management program, as changed by the amendment, will still constitute an approvable program under the CZMA. OCRM has made a final determination that Alaska has met the procedural requirements of §§ 306(d) and (e) of the CZMA for submitting a program change; the ACMP will still meet the substantive requirements of the CZMA's five categories: uses subject to management, special management areas, boundaries, authorities and organization, and, coordination, public involvement, and national interest (*see* 15 C.F.R. part 923, subparts B through F); and that the ACMP, as revised, would still constitute an approvable program. The attached Findings of Approvability are incorporated by reference.

OCRM approves the ACMP amendment because OCRM believes Alternative 1 meets the program change requirements of the CZMA, and will be the best opportunity for continued comprehensive protection of Alaska's coastal resources. In addition, approval of the ACMP will ensure that districts will continue to have an opportunity to participate in the review of federal actions, either within, or affecting coastal resources of local importance. OCRM did not select either Alternatives 2 or 3 because both ultimately would have resulted in the repeal and termination of the ACMP, as well as because OCRM determined that the amendment request met the criteria for approval under the CZMA. Termination of the ACMP would potentially lead to adverse physical and socio-economic impacts to coastal resources and communities associated with lack of federal consistency requirements available only through participation in the national coastal management program; loss of funding for implementation of the ACMP; and loss of Alaska's comprehensive coastal management program which allows for district participation in state coastal resource management decisions.

MITIGATION MEASURES AND MONITORING

The CEQ's NEPA implementing regulations require agencies to identify in the ROD whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. 40 C.F.R. part 1505.2(c). The regulations further state that a monitoring and enforcement program be adopted and implemented, where applicable, for any mitigation. Mitigation includes avoidance, minimization, and reduction of impacts, and compensation for unavoidable impacts.

A. Mitigation Measures

Alternative 1 (the Proposed Action) may indirectly result in unavoidable adverse impacts to subsistence resources and the minority and low income residents of coastal districts who rely on these resources, as compared to the current program. OCRM's authority to provide mitigation for impacts associated with approval of the ACMP stem from its oversight authority under the CZMA. Under the CZMA, OCRM has two programmatic tools at its disposal: (1) Section 312 evaluations of Alaska's implementation of its CMP; and (2) annual Sections 306, 306(a), 309, and 310 funds provided to Alaska through a cooperative agreement with NOAA to implement the ACMP. These two mitigation measures identified are discussed in detail in Section 10.3 of the final EIS and are consistent with the requirements of the CZMA.

B. Monitoring and Enforcement Program

Many of the effects analyses in the EIS were premised on OCRM's inability to determine impacts associated with future State discretionary decisions and Alaska's actual implementation and interpretation of its revised CMP. OCRM proposes to use the two tools discussed above to monitor Alaska's implementation of the revised ACMP for impacts to the affected resources, and apply these tools as necessary.

In addition to the mitigation and monitoring proposal discussed in the final EIS, in December 2005, OCRM met with Native Alaska government representatives in Anchorage, Alaska, to discuss establishing a series of annual visits to Alaska Native villages to monitor the impacts of the revised ACMP for potential impacts on the Native Alaska subsistence-based culture. The visits would commence starting in 2006, and would consist of one-to-two visits of one or two weeks each year, meeting in different villages each time. OCRM would also arrange to meet with other Native Alaskan government representatives in cities and towns that are on OCRM's travel agenda (e.g., hubs such as Anchorage, Juneau, Fairbanks, Bethel, Barrow, Yakutat). These visits will also include non-governmental groups representing Native Alaskans such as Native Alaskan Corporations, the Alaska-Inter-Tribal Council, the Alaska Eskimo Whaling Commission, etc. The visits to the villages will help OCRM document any impacts resulting from OCRM's decision to approve the ACMP amendments. While this process would not be a review of the ACMP pursuant to the CZMA, any actions that OCRM may

take regarding the ACMP as a result of this process would be limited to OCRM's authority under the CZMA.

SUMMARY FINDING

Through the EIS and as documented in this ROD, OCRM has considered the objectives of the proposed action and has analyzed a reasonable range of alternatives that adequately address the objectives of the proposed action, and the extent to which impacts of the action could be mitigated. OCRM has also considered public and agency comments received during the EIS review periods. In balancing the projected effects of the various alternatives presented in the EIS and public interest, OCRM has decided to implement Alternative 1, which is the Proposed Action, the environmentally preferred alternative, and OCRM's preferred alternative. Consequently, OCRM concludes that Alternative 1 provides reasonable, practical means to avoid, minimize, or compensate for environmental harm from the action.

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Captain Craig McLean, NOAA
Acting Deputy Assistant Administrator
National Ocean Service

29 December 2005

Date

ATTACHMENT 1

NOAA's Findings of Approvability



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

DEC 29 2005

The Honorable Frank H. Murkowski
Governor of the State of Alaska
Juneau, Alaska 99811-0001

Dear Governor Murkowski:

The Office of Ocean and Coastal Resource Management has completed the approvability review of the amendment to the Alaska Coastal Management Program (ACMP) as submitted, June 2, 2005, pursuant to section 306(d) of the Coastal Zone Management Act of 1972 (CZMA). After an extensive review of the amended ACMP, I find that the amended ACMP, as described in Enclosure I – Final Findings of Approvability, Enclosure II – NOAA Approval Finding Chart for Amendment to the Alaska Coastal Management Program, and Enclosure III – Enforceable Policies Identified in the June 2, 2005 Amendment to the Alaska Coastal Management Program, meets all requirements of the CZMA. Therefore, I approve the amended ACMP.

Enclosure II provides details on how the amended ACMP adequately addresses the amendment requirements as described in 15 CFR part 923.

Federal approval of the ACMP will be noticed in the *Federal Register* as soon as possible.

Please contact David Kaiser of my staff at 603-862-2719, if you have any comments or questions on the approval of the amendment or the enclosed materials.

Sincerely,

Captain Craig McLean, NOAA
Acting Deputy Assistant Administrator

Enclosures

cc: Randy Bates, w/encl.



ENCLOSURE I

ALASKA COASTAL MANAGEMENT PROGRAM

AMENDMENT NO. 5

Incorporation of the June 2, 2005, Alaska Coastal Management Program
Amendment Request into the Alaska Coastal Management Program

FINAL FINDINGS OF APPROVABILITY

December 29, 2005

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Issued by the
National Ocean Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

NOAA's FINAL FINDINGS OF APPROVABILITY

June 2, 2005, Amendment Request to the Alaska Coastal Management Program

INTRODUCTION

Recognizing the need for coordinated effort to manage the nation's coastal resources, Congress passed the federal Coastal Zone Management Act (CZMA) in 1972, 16 U.S.C. §§ 1451-1465. The CZMA established a voluntary program for the comprehensive management, use, protection, and development of the land and water resources of the nation's coastal areas. The federal program encourages states to exercise more fully their authorities and responsibilities related to coastal resources. In July 1979, the Secretary of Commerce approved the Alaska Coastal Management Program (ACMP).

The CZMA provides guidelines for the development of state coastal management programs. The implementing federal regulations at 15 C.F.R. part 923, subparts B-G, outline the requirements for state program development and approval. Subpart H of these regulations includes the guidelines for changing an approved state program. Changes to an approved program may be processed as either a routine program change or as a substantial change, or an amendment. *See* 15 C.F.R. part 923, subpart H. This document provides the approval findings of the Assistant Administrator for Ocean Services and Coastal Zone Management, of the National Oceanic and Atmospheric Administration (NOAA), regarding Amendment No. 5 to the ACMP.

The ACMP approved in 1979 was based on the Alaska Coastal Management Act of 1977 (ACMA) which established a program based on shared local (coastal districts) and State coastal management responsibilities. The ACMA created the Coastal Policy Council (CPC) comprised of both State and district representatives. The CPC was responsible for approving statewide standards and guidelines for the management of coastal land and water uses, and reviewing and approving district programs. The Governor's Office of Management and Budget, Division of Governmental Coordination served as staff to the CPC and was the lead ACMP agency. The ACMP also includes regulations including guidelines and standards related to coastal resources, and provides for district programs to implement the ACMP provisions.

Over the last two years, the State of Alaska has adopted legislation and regulations that made revisions to its federally approved coastal management program. Alaska adopted the amendments primarily to improve its consistency review process both in timing and predictability, and establish clear performance criteria in its statewide coastal standards. Methods for achieving these goals included several measures, such as elimination of the CPC, replacement of current statewide standards, and requiring revisions to all coastal district plans. In addition, certain activities requiring state authorizations that previously were subject to the ACMP consistency review process were exempted from such review, and limits were placed on parties who have standing to file legal claims challenging ACMP consistency decisions.

On June 2, 2005, Alaska formally submitted to NOAA a request to amend the ACMP. The amendment included: Executive Order (EO) 106, House Bills (HBs) 191, 69, 86, and Senate Bill (SB) 102 along with revisions to statute AS 46, and the new implementing

regulations at 11 AAC 110, 11 AAC 112, and 11 AAC 114. The new implementing regulations replace the existing consistency review procedure regulations previously found at 6 AAC 50, the statewide standards previously found at 6 AAC 80, and the district program guidelines previously found at 6 AAC 85. The HBs and SB and regulations were introduced and signed into law between May 21, 2003, and May 26, 2005. These changes transfer responsibility for implementation of the ACMP from the Division of Governmental Coordination in the Governor's Office to the Department of Natural Resources (DNR). HB 191 eliminates the CPC, and transfers authority for development of statewide standards for the ACMP and review and approval of district plans to DNR. In addition, HB 191 requires DNR to adopt new regulations by July 1, 2004, to establish statewide standards for the ACMP as well as criteria for approval of new district plans.

The amendment also provides that all current district plans will sunset, and districts desiring to participate in the revised ACMP must develop new plans based on the new standards and guidelines and submit them to DNR in 2006. Under HB 69, shallow gas exploration and development projects that are conducted under the oversight and regulation of the Alaska Oil and Gas Conservation Commission and State resource agencies are automatically determined to be consistent with the ACMP. HB 86 specifies that, with respect to a State consistency decision, only an applicant or affected coastal resource district is eligible to appeal a non-constitutional matter. Otherwise, the State's consistency decision is not subject to review, stay or injunction by the State courts.

NOAA issued preliminary approval on the State's submission on June 27, 2005, and started the National Environmental Policy Act (NEPA) process, which resulted in the development of an Environmental Impact Statement (EIS). Pursuant to NEPA, a Record of Decision document for the approval of the ACMP amendment is being issued concurrent with these findings.

The following summary addresses the key points in NOAA's program approval requirements. A more detailed description is found in the two attachments that address the amendment process in general and the program approval requirements, respectively.

FINAL FINDINGS

1. Uses Subject to Management (15 C.F.R. part 923, subpart B)

The ACMP amendment identifies nine major uses or activities which are subject to the program; coastal development, natural hazards areas, coastal access, energy facilities, utility routes and facilities, timber harvest and processing, sand and gravel extraction, subsistence, and transportation routes and facilities. Specific uses subject to ACMP consistency review are those uses requiring either State agency authorizations or federal consistency review. The subject uses were not substantially changed by this amendment, with the exception that mining was deleted as a use requiring ACMP review. In this instance, the State presented substantial evidence that mining was adequately managed through existing DNR authorities. *See* the June 2 ACMP Document, pp. 35-41.

The enforceable policies of the ACMP are comprised of the policies included in: (1) the State resource agency authorities incorporated into the ACMP; (2) the ACMP statewide standards that include policies addressing the uses and activities noted above as well as policies regarding habitats; air, land, and water quality; and historic, prehistoric, and archeological resources, which are found at 11 AAC 112; and (3) the coastal district policies developed and approved under 11 AAC 114.

The ACMP statewide standards have been substantially revised as part of the amendment process. These revisions are intended to simplify State policy guidance and reduce duplication with existing State agency and Federal agency resource management policies. *See* the June 2 ACMP Document, chapter 5.

Similarly, the regulations for governing the development of district plans and policies also have been substantially revised. District plans are now voluntary, and district enforceable policies must meet specific standards so that they do not overlap or conflict with existing State resource agency or ACMP statewide policies.

The ACMP amendment changes to the statewide standards and the guidance governing the development of district plans and policies are substantial and controversial. As a result, the changes were analyzed in detail in NOAA's EIS and policy review process. Based on these reviews, NOAA finds that the revised ACMP is consistent with the CZMA and NOAA's implementing regulations with regard to uses subject to management.

2. Special Management Areas (15 C.F.R. part 923, subpart C)

The six methods by which areas of particular concern can be identified/designated and managed in Alaska's coastal area are described in Chapter 7, pp. 145 -152 of the June 2 ACMP Document. Two of these methods include: (1) the coastal districts may designate areas of particular concern under 11 AAC 114.250(b)-(i); and, (2) special areas can be identified within the consistency review process by DNR under 11 AAC 112.210(a) and 11 AAC 112.300(c)(1)(B). The ACMP includes a list of the 33 special areas designated to date on pp. 150 - 151 of the June 2 ACMP Document. Although the process for designating such areas has been slightly changed in the

amendment, it remains consistent with NOAA's regulations. Therefore, NOAA finds that the revised ACMP is consistent with the CZMA and NOAA's implementing regulations with regard to special management areas.

3. Boundaries (15 C.F.R. part 923, subpart D)

The amendment does not change the ACMP boundaries, including the inland boundary. As a result the ACMP coastal zone includes all the resource areas required by the above subpart. NOAA therefore finds that the revised ACMP is consistent with the CZMA and NOAA's implementing regulations with regard to boundaries. The boundary includes those areas approved in original program approved by NOAA and additional areas included when the coastal districts plans were originally approved. Criteria for defining Alaska's coastal zone boundary are found at 11 AAC 114.220. See June 2 ACMP Document, pp. 13-18. The general description of the ACMP boundary continues to be the following:

Alaska's coastal zone is based on three zones based on biophysical relationships: (1) zone of direct interaction - the area where physical and biological processes are a direct function of contact between land and sea; (2) the zone of direct influence - the area closely affected and influenced by the close proximity of land and sea; and (3) the zone of indirect influence - the area beyond the zone of indirect influence to the limit of identifiable land/sea interaction. Local coastal programs may establish more specific boundaries.

The State has redefined the term "coastal waters" to mean "contain[ing] a measurable quantity or percentage of sea water." This definition is the same as used in CZMA. Previously, under the old 6 AAC 80.900(2), coastal waters were defined as, "all water bodies in the coastal area, including wetlands and the intertidal area." The definition now being used for 'coastal water' was previously used by the State under 6 AAC 85.900 (2) for "marine coastal water," which meant "water adjacent to shorelines which contains a measurable quantity of seawater." Although this change does not affect the ACMP boundary, it will have the affect of limiting the application the revised statewide standards cited below, which are either limited to coastal waters or waters having a direct and significant effect on coastal waters: 1) coastal access; 2) sand and gravel extraction; 3) important habitats; 4) rivers, streams, and lakes; 5) wetlands; and 6) coastal zone boundaries.

4. Authorities and Organization (15 C.F.R. part 923, subpart E)

The statutes, regulations and other authorities that will be used to implement the ACMP are identified in Chapter 5 of the June 2 ACMP Document. The ACMP organizational structure to implement the ACMP, including the implementation role of the State agencies and coastal districts has been significantly changed. The revised program organizational structure is described on pp. 19 - 33 of the June 2 ACMP Document. Implementation and lead agency responsibility of the ACMP was transferred from the Division of Governmental Coordination to DNR's Office of Project Management and Permitting (OPMP), and the Coastal Policy Council was abolished. Coastal districts can develop revised district plans on a voluntary basis, and the policies included in such plans must conform to several new criteria which limit duplication with

existing State policy. NOAA finds that the revised ACMP is consistent with the CZMA and NOAA's implementing regulations with regard to authorities and organization.

5. Coordination, public involvement and the national interest
(15 C.F.R. part 923, subpart F)

Continuing coordination between ACMP and local and area wide plans is accomplished through interagency and intergovernmental groups and processes created for the implementation of the original ACMP. Also coordination is maintained through the consistency review process of 11 AAC 110 and the coastal district plan development process of 11 AAC 114. The public information provided, and public involvement process used in the development of the ACMP Amendment, is described on pp. 157 - 176 of the June 2 ACMP Document. In AS 46.40.210(12), "Uses of State Concern" defines the national interest. See June 2 ACMP Document, pp. 41-42. NOAA finds that the revised ACMP is consistent with the CZMA and NOAA's implementing regulations with regard to coordination, public involvement and the national interest.

6. The following procedural requirements of Section 306(e) of the CZMA have been met:

(A) The State has promptly notified the Assistant Administrator of the proposed amendment and submitted for the Secretary's approval.

(B) Within 30 days after NOAA received the proposed amendment, NOAA found it necessary to extend the review of the amendment.

7. The following procedure requirements of 15 C.F.R. part 923, subpart H have been met:

(A) The State developed the amendment with the opportunity for full participation by local governments, and interstate, regional and areawide agencies within the coastal zone.

(B) The Governor designated a single State agency to administer the CZM program.

The State promptly notified NOAA of changes to the ACMP including proposed legislative changes initiated in 2003. The State formally submitted the complete amendment package on June 2, 2005, at which time NOAA informed the State that it was necessary to extend the review period to complete NEPA review. As described in pp. 157-176 of the June 2 ACMP Document, the public involvement process used in the development of the ACMP Amendment provided for the full participation of affected parties. The Governor designated DNR as the lead agency for the program by Executive Order 106.

8. National Environmental Policy Act Requirements

In accordance with NEPA regulations, NOAA prepared an EIS to assess the environmental impacts associated with the approval and implementation of changes to the ACMP submitted by the State of Alaska to NOAA. The EIS provides a basis for these Findings of Approvability.

A Notice of Availability was published in the *Federal Register* for the draft EIS on September 23, 2005, with a 45 day comment period. The required 30-day notice for the final EIS was published on November 18, 2005.

NOAA received 32 written comments on the draft EIS and also held public meetings in Juneau, Anchorage and Barrow to provide opportunities for verbal testimony. Commenters included representatives of Cities, Boroughs and Coastal Resource Service Areas, Native Alaskan governments, Federal agencies, and private citizens.

Tribal consultation efforts under Executive Order 13175 were concluded by conference call on November 9, 2005. On December 6, 2005, NOAA met with Native Alaska government representatives in Anchorage, Alaska, to discuss establishing a series of annual visits to Alaska Native villages to monitor the impacts of NOAA's ultimate decision regarding the ACMP for potential impacts on the Native Alaska subsistence-based culture. At the Anchorage meeting, Native Alaskan government representatives endorsed NOAA's proposal and invited OCRM to several villages. NOAA's proposal is based, not on the CZMA, but, rather, on NOAA's federal trust responsibility to American Indian and Native Alaskan governments. The visits would commence starting in 2006, and would consist of one-to-two visits of one or two weeks each year, meeting in different villages each time. NOAA would also arrange to meet with other Native Alaskan government representatives in cities and towns that are on NOAA's travel agenda (e.g., hubs such as Anchorage, Juneau, Fairbanks, Bethel, Barrow, Yakutat). These visits will also include non-governmental groups representing Native Alaskans such as Native Alaskan Corporations, the Alaska-Inter-Tribal Council, the Alaska Eskimo Whaling Commission, etc. The visits to the villages will help OCRM document any impacts resulting from NOAA's decision to approve the ACMP amendments. While this process would not be a review of the ACMP pursuant to the CZMA, any actions that NOAA may take regarding the ACMP as a result of this process would be limited to NOAA's authority under the CZMA.

CONCLUSION

I issue these findings and make a final determination that the Alaska Coastal Management Program, as amended by the June 2, 2005, ACMP Amendment Document, still constitutes an approvable program and that procedural requirements of the CZMA and its implementing

regulations have been met. Having made these findings, I approve this amendment effective December 29, 2005.



Captain Craig McLean, NOAA
Acting Deputy Assistant Administrator
for Ocean Services and Coastal Zone Management
National Oceanic and Atmospheric Administration

29 December 2005
Date

**ENCLOSURE II — NOAA APPROVAL FINDING CHART
FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

APPROVAL CRITERIA	NOAA's FINDINGS
<p>The state must explain how land and water uses will be managed, and define enforceable policies and other governing authorities. 15 CFR § 923.11(a)(3).</p>	<p>NOAA finds that the ACMP adequately explains how land and water uses will be managed, and the ACMP adequately describes enforceable policies and other governing authorities. The uses to be managed by the ACMP are described on pages 34-41 of the June 2, 2005, ACMP Amendment Document (June 2 ACMP Document) and 11 AAC 110.010(b). The subject uses are those uses requiring either state agency authorization or federal consistency review, as described on pages 35 and 36 of the June 2 ACMP Document. As described on page 45 of the June 2 ACMP Document, the enforceable policies of the ACMP are comprised of the policies included in the State resource agency authorities incorporated into the ACMP; the ACMP statewide standards at 11 AAC 112; and the coastal district policies developed and approved under 11 AAC 114.</p>
<p>The program must include sufficient detail to enable affected parties to determine whether an area is designated an area of particular concern. 15 § CFR 923.21(d).</p>	<p>NOAA finds that the ACMP description provides for the designation of areas of particular concern and are adequately described in the June 2 ACMP Document, Chapter 7, and that it includes sufficient detail to enable affected parties to determine whether an area is designated as an APC.</p>
<p>The Inland boundary must include areas where uses are managed, areas of particular concern, waters under saline influence, salt marshes and wetlands, beaches, transitional and intertidal areas, and islands. 15 CFR § 923.31(a)(1) - (a)(7).</p>	<p>NOAA finds that the ACMP inland boundary has not changed as a result of this amendment and therefore includes all of the areas required by the CZMA and 15 C.F.R. part 923. This boundary includes those areas included within the original program approved by NOAA and additional areas added by districts as part of the district plan approval process in place prior to this amendment. The boundary is adequately described in the June 2 ACMP Document, Chapter 2. Detailed maps of the boundary are available from the AK DNR.</p>
<p>The program must identify the means by which the state proposes to exert control over the permissible uses, including a list of relevant constitutional provisions, laws, regulations, and judicial decisions. 16 USC § 1455(d)(2)(D); 15 CFR § 923.41(a)(1) and (b).</p>	<p>NOAA finds that the authorities are both adequately described and of sufficient scope to manage the use subject to the program. These authorities are described primarily in the June 2 ACMP Document, Chapter 4. The authorities include the Alaska coastal management statute (Chapter 46 Alaska Statutes or the "ACMP statute"), the Alaska resource agency authorities and rules listed on pages 36-39 of the June 2 ACMP Document; the ACMP statewide standards at 11 AAC 112; and, the procedures of developing revised district plans and policies at 11 AAC 114. District plans and policies that had been approved prior to the submittal of this amendment to the ACMP sunset on March 1, 2007, at which time only those revised plans and policies which have been approved by DNR, pursuant to this amendment, will be enforceable. Finally, the List of Expedited Consistency Reviews and State Authorizations (the "ABC List"), as modified on May 25, 2004, provides guidance on the level of ACMP review for various projects subject to such review.</p>

**ENCLOSURE II — NOAA APPROVAL FINDING CHART
FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

APPROVAL CRITERIA	NOAA's FINDINGS
Technique A - Local implementation –The program must include criteria and standards for local implementation, subject to administrative review and enforcement. 16 USC § 1455(d)(11)(A).	NOAA finds that the ACMP provides sufficient criteria and standards regarding district plan and enforceable policy development in Section 5.3 in the June 2 ACMP Document Chapter 5 (pp. 68-108). The development of district plans is voluntary, and is intended to complement, but not replace the statewide policies at 11 AAC 112.
Technique A – The state must have the ability to ensure coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the CMP can be implemented directly by the State; 15 CFR § 923.42(b)(3).	NOAA finds that the procedures discussed in Section 5.3 of the June 2 ACMP Document provide adequate guidance to ensure that district plans and enforceable policies are consistent with the statewide standards. Furthermore, the State is responsible in all cases for directly implementing the statewide standard directly through the State and Federal consistency process.
Technique A – The state must have a procedure where the State reviews and certified the local programs compliance with State standards and criteria including opportunities for the public and governmental entities (including Federal agencies) to participate and make their views know in the development of local programs; and 15 CFR § 923.42(b)(4).	NOAA finds that the procedures for the development, review, and approval of district plans and enforceable policies is sufficiently described in 11 AAC 114 (<i>see</i> p. 26 in the June 2 ACMP Document) and provides adequate opportunity for public and Federal agency review.
Technique A – The state must have the ability to assure implementation and enforcement of a local program once approved. 15 CFR § 923.42(b)(5).	NOAA finds that 11 AAC 114.365 and .375 provide adequate authority and procedures to assure implementation and enforcement of approved district plans (<i>see</i> pp. 20-30 in the June 2 ACMP Document).
Technique B – The state must have requisite direct authority to plan and regulate land and water uses subject to the CMP 15 CFR § 923.43(b).	NOAA finds that the ACMP statute, as amended, when combined with existing State authorities (State permit, lease, and other authorizations) listed on pp. 36-39 of the June 2 ACMP Document provide adequate authority to manage the identified uses to be managed.

**ENCLOSURE II — NOAA APPROVAL FINDING CHART
FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

APPROVAL CRITERIA	NOAA's FINDINGS
Technique C - 15 CFR § 923.44.	N/A
The Program must incorporate by reference or otherwise all requirements established by the Clean Water Act (CWA), or the Clean Air Act (CAA), or established by the Federal Government or by any state or local government pursuant to such Act. 16 USC § 1456(f); 15 CFR § 923.45.	NOAA finds that the ACMP incorporates the statutes and regulations of the DEC with respect to the protection of air, land and water quality identified in AS 46.40.040(b). These have been adequately described in the June 2 ACMP Document, Chapter 5. The State standards at 11 AAC 112.310 contain the ACMP air and water quality requirements, as administered by DEC.
State must be organized to implement the CMP, and the organizational structure must be fully described. 16 USC § 1455(d)(7) and (d)(2)(F); 15 CFR § 923.46.	NOAA finds that the ACMP organizational structure including the DNR as lead agency, other State agencies and local government responsibilities necessary to implement the ACMP, as described in the June 2 ACMP Document, Chapter 3 and Chapter 6, is adequate to implement the revised ACMP.
The state must hold at least two public hearing during the course of program development, one of which will be on the total scope of the CMP, covering the substance and content of the proposed CMP. 15 CFR § 1455(d)(4); 15 CFR § 923.58(a).	NOAA finds that the Alaska legislative scheduled hearings on HB 191, SB 143, HB 69 and HB 86, which allowed the committee members to hear public testimony on the program development of the ACMP, and the public hearing on the total scope of the ACMP on held on May 20, 2005 meet this requirement. <i>See</i> June 2 ACMP Document, Chapter 8.
The state must provide a minimum of 30 days public notice of hearing dates and locations 15 CFR § 923.58(b).	The State provided a 30-day notice for the May 20, 2005, hearing.

**ENCLOSURE II — NOAA APPROVAL FINDING CHART
FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

APPROVAL CRITERIA	NOAA's FINDINGS
The state must make available for public review, at the time of public notice, all agency material pertinent to the hearings. 15 CFR § 923.58(c).	Same as above. All material was available on the ACMP web site: http://www.alaskacoast.state.ak.us/ . Therefore the State has met this requirement
The state must include a transcript of summary of the public hearing(s). 16 USC § 1455(d)(4); 15 CFR § 923.58(d).	Transcripts of the hearings can be found at http://www.legis.state.ak.us/basis/start.asp . Therefore the State has met this requirement
The state must contact relevant federal agencies, allow for their full participation, and adequately consider their views. 16 USC § 1456(b); 15 CFR § 923.51(a) and (d)(1).	NOAA finds that the ACMP provided for sufficient contact with Federal agencies and that these criteria have been adequately met. <i>See</i> June 2 ACMP Document, Chapter 8. (page 164)
The State must provide for Federal agency input on a timely basis as the program is developed. 16 CFR § 923.51(d)(2).	Same as above.
The state must solicit statements from the head of Federal agencies as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature. 15 CFR § 923.51(d)(3).	These statements were obtained as part of original program approval. As noted above, Alaska coordinated with Federal agencies and the national interest statements were not revised by review of this amendment.

**ENCLOSURE II — NOAA APPROVAL FINDING CHART
FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM**

APPROVAL CRITERIA	NOAA's FINDINGS
The state must summarize the nature, frequency, and timing of contact with relevant Federal agencies. 15 CFR § 923.51(d)(4).	The State described contact with Federal agencies. <i>See</i> June 2 ACMP Document, Chapter 8. (page 164).
The state must evaluate Federal comments received during the program development process. 15 CFR § 923.51(d)(5).	Same as above. In addition, Federal agency comments on the DEIS can be found in Appendix E, and responses to those comments, can be found Attachment F of the FEIS.
The State must describe the public notice procedures for Federal License and permit activities and, where appropriate, OCS plans. 15 CFR §§ 930.42, 923.53(a)(4), 930.61, 930.62, 930.78.	NOAA finds that Alaska's description of public notice procedures for federal license or permit activities and, where appropriate, OCS plans, are adequate. <i>See</i> June 2 ACMP Document Chapter 6 (pp. 110/111 and 138.)

Enclosure III: Enforceable Policies Identified in the June 2, 2005 Amendment to the Alaska Coastal Management Program

The enforceable policies of the Alaska Coastal Management Program (ACMP) include: 1) the substantive standards contained within State resource agency authorities incorporated into the ACMP; 2) the ACMP statewide standards at 11 AAC 112; and 3) coastal district enforceable policies developed and approved under 11 AAC 114.

1) State Resource Agency Authorities

The substantive standards contained within the following State resource agency authorities, permit, or lease programs as of June 2, 2005

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

- Permit to apply pesticides to waters of the state, aerial application on public or private land, and right-of-way applications for pesticide use which fall under the purview of the DEC permit to apply pesticides. (AS 46.03.320, 18 AAC 15, 18 AAC 90.500, 18 AAC 90.505).
- Transfer, storage, and disposal (TSD) Resource Conservation and Recovery Act (RCRA) Hazardous Waste. (AS 46.03.302, 18 AAC 63).
- Air quality control construction permit that approves air emissions. (AS 46.14.120, AS 46.14.130, 18 AAC 15, 18 AAC 50).
- Air quality control operating permit that approves air emissions. (AS 46.14.120, AS 46.14.130, 18 AAC 15, 18 AAC 50).
- Solid waste disposal permit. (AS 46.03.020, AS 46.03.100, AS 46.03.110, AS 46.03.120, 18 AAC 15, 18 AAC 60).
- Reclassification of state waters. (AS 46.03.020, 18 AAC 15, 18 AAC 70.230).
- Waste disposal permit (wastewater discharge). (AS 46.03.020, AS 46.03.100 & 110, AS 46.03.120 & 710, 18 AAC 15, 18 AAC 70, 18 AAC 72).
- 401 Certification-Certificate of Reasonable Assurance Section 401. (AS 46.03.020, 18 AAC 15, 18 AAC 70, 18 AAC 72).
- Oil discharge contingency plans for offshore facilities and onshore fuel storage facilities with a capacity of 10,000 barrels or greater. (AS 46.04.030, AS 46.04.050, 18 AAC 75.400 – 496).
- Oil discharge contingency plans for oil tankers and oil barges. (AS 46.04.030, 18 AAC 75.400 – 496).

DEPARTMENT OF FISH AND GAME

- Permit to operate a clam dredge. (5 AAC 38.050).
- Aquatic farm and hatchery permit. (AS 16.40.100, 5 AAC 41).
- Special Area Permit. (AS 16.20, 5 AAC 95).
- Hatchery permit (Private Non-Profit). (AS 16.10.400 – 430).

DEPARTMENT OF NATURAL RESOURCES

Division of Agriculture

- Lease of cleared or drained agricultural land. (AS 38.07).
- Disposal of agricultural interest. (AS 38.05.321, 11 AAC 67.167 – 188).
- Approval of application for clearing or draining of agricultural land in vicinity of state land. (AS 38.07.030).

Division of Forestry

- State timber sale and personal use contract of more than 10 acres in the spruce-hemlock coastal forests (OPMP Southeastern region and Prince William Sound) and more than 40 acres in interior forests south of the Alaska Range (OPMP Southcentral region excluding Prince William Sound), and any timber sale which includes timber lands within 90 meters from anadromous and high value resident fish waters. State timber sale and personal use contract of more than 160 acres north of the Alaska Range (OPMP northern region), and any timber sale that includes timber lands within 30 meters of anadromous and high value resident fish waters. Negotiated Timber Sales to Local Manufacturers. (AS 38.05.110, AS 38.05.118, AS 38.05.120, AS 38.05.123, 11 AAC 71).
- Log salvage sales. (AS 38.05.110, AS 38.05.118, AS 38.05.120, 11 AAC 71.400 – 430).

Division of Mining, Land and Water

- Aquatic farming and hatchery lease. (AS 38.05.083, 11 AAC 63).
- Coal lease sales. (AS 38.05.150, 11 AAC 85).
- Coal prospecting permit. (AS 38.05.145, AS 38.05.150(c), 11 AAC 85.110).
- Disposal of land by auction or lottery. (AS 38.05.050 – 057, 11 AAC 67).
- Grazing lease. (AS 38.05.070, AS 38.05.075, 11 AAC 60).
- Homestead Disposal. (AS 38.09, 11 AAC 67.138 – 155).
- Lease, sale, grant, or other disposal. (AS 38.05.070-075, 11 AAC 58, 11 AAC 60).
- Lease of Tidelands. (AS 38.05.070-075, 11 AAC 62).
- Material Sales, except sales from approved upland sources and personal use contracts. (AS 38.05.110 – 120, 11 AAC 71).
- Offshore mining lease and sale. (AS 38.05.145, AS 38.05.250, 11 AAC 86.530 – 580).
- Offshore mining prospecting permit. (AS 38.05.250(a), 11 AAC 86.500 – 535).
- Oil and natural gas pipeline right-of-way leasing. (AS 38.35, 11 AAC 80.005 – 055).
- Phosphate lease. (AS 38.05.145, AS 38.05.155, 11 AAC 84.200).
- Potassium compound prospecting permit and lease. (AS 38.05.145, AS 38.05.175, 11 AAC 84.600).

- Right of way or easement permit for roads, trails, ditches, pipelines, drill sites, log storage, telephone or transmission lines, outfall lines, or access corridors. (AS 38.05.850, 11 AAC 51).
- Sodium compound prospecting permit and lease. (AS 38.05.145, AS 38.05.165, 11 AAC 84.400).
- Sulphur prospecting permit and lease. (AS 38.05.145, AS 38.05.170, 11 AAC 84.500).
- Tideland Conveyance. (AS 38.05.820, AS 38.05.821, AS 38.05.825, 11 AAC 62).
- Upland mining lease. (AS 38.05.185, AS 38.05.205, 11 AAC 86.300 – 350).
- Water use permit. (AS 46.15, 11 AAC 93).
- Approvals subject to the Alaska Surface Coal Mining Control and Reclamation Act (SMCRA), other than Notices of Intent to Explore. (AS 27.21.030, AS 27.21.060, 11 AAC 90.001).
- General land use permits, except for those classified as categorically consistent (A List) or generally consistent (B List) approvals. (AS 38.05.850).
- Miscellaneous land use permit for mining activity or mineral exploration. (AS 38.05.020, AS 38.05.035, AS 38.05.850, 11 AAC 96).
- Mining reclamation plan approval. (AS 27.19, 11 AAC 97).
- Approval of plan of operations or plan of development on leased lands (Deadline does not apply when the plan is included in the lease at the time of the sale). (AS 38.05.035, AS 38.05.070 – 075, 11 AAC 62.700).
- Plans of operations on leased lands or land subject to an offshore prospecting permit. (AS 38.05.020, AS 38.05.035, 11 AAC 96).
- Material mining reclamation plan approvals. (AS 27.19, 11 AAC 97).
- Temporary water use permits for water withdrawals, except for withdrawals from sources classified as categorically consistent or generally consistent approvals. (AS 46.15.155, 11 AAC 93).
- Tideland use permit. (AS 38.05.850, 11 AAC 96).

Division of Oil and Gas

- Oil and gas licenses and leases. (AS 38.05.131 – 134, AS 38.05.135, AS 38.05.145, AS 38.05.180, 11 AAC 83).
- Geothermal lease sales. (AS 38.05.145, AS 38.05.181, 11 AAC 84.700 – 790).
- Oil shale lease. (AS 38.05.145, 11 AAC 84.300).
- Application to drill geothermal wells. (AS 41.06.050).
- Plan of operations on lease lands. (AS 38.05.135, AS 38.05.145, AS 38.05.180, 11 AAC 83.158).
- Geophysical exploration permit. (AS 38.05.020, AS 38.05.035, AS 38.05.180, 11 AAC 96).
- Geothermal prospecting permit. (AS 38.05.145, AS 38.05.181(g), 11 AAC 84.700 – 790).

Office of Habitat Management and Permitting

- Fish habitat permit. (AS 41.14.840, AS 41.14.870).

Division of Parks and Outdoor Recreation

- Authorization to construct structure in state parks. (AS 41.21.020, 11 AAC 12.140, 11 AAC 18.010).
- Authorization to use explosives in state parks. (AS 41.21.020, 11 AAC 12.195, 11 AAC 18.010).
- Permit for access across state parks. (AS 41.21.024, 11 AAC 18.010).
- Special use permit. (AS 41.21.020, 11 AAC 18.010).
- Archaeological Permit for the excavation of historic or archeological resources. (AS 41.35.080, 11 AAC 16.030 – 080).

2) The Statewide Standards of the Alaska Coastal Management Program at 11 AAC 112, effective June 25, 2005.

- 11 AAC 112.200. Coastal development.
- 11 AAC 112.210. Natural hazard areas.
- 11 AAC 112.220. Coastal access.
- 11 AAC 112.230. Energy facilities.
- 11 AAC 112.240. Utility routes and facilities.
- 11 AAC 112.250. Timber.
- 11 AAC 112.260. Sand and gravel extraction.
- 11 AAC 112.270. Subsistence.
- 11 AAC 112.280. Transportation routes and facilities.
- 11 AAC 112.300. Habitats.
- 11 AAC 112.310. Air, land, and water quality.
- 11 AAC 112.320. Historic, prehistoric, and archeological resources.
- 11 AAC 112.900. Sequencing process to avoid, minimize, or mitigate.
- 11 AAC 112.990. Definitions.

3) The enforceable policies contained in Approved Coastal District Management Plans.

Coastal districts are currently revising their plans including enforceable policies to meet the requirements of the amended ACMP. Over the next several years, the enforceable policies of district plan will be revised as each district coastal management plan is reviewed, and approved under 11 AAC 114, and is reviewed, and approved by OCRM at the federal level. The districts with approved plans as of June 2, 2005, include:

- Aleutians East Borough
- Aleutians West Coastal Resource Service Area
- Bering Straits Coastal Resource Service Area
- Bristol Bay Borough
- Bristol Bay Coastal Resource Service Area
- Cenalulriit Coastal Resource Service Area

- City and Borough of Juneau
- City and Borough of Sitka
- City and Borough of Yakutat
- City of Angoon
- City of Bethel
- City of Cordova
- City of Craig
- City of Hoonah
- City of Hydaburg
- City of Kake
- City of Klawock
- City of Nome
- City of Pelican
- City of St. Paul
- City of Skagway
- City of Thorne Bay
- City of Valdez
- City of Whittier
- Kenai Peninsula Borough
- Ketchikan Gateway Borough
- Kodiak Island Borough
- Lake and Peninsula Borough
- Matanuska-Susitna Borough
- Municipality of Anchorage
- North Slope Borough
- Northwest Arctic Borough

ATTACHMENT 2

APPENDIX H: Essential Fish Habitat Assessment; Alaska Coastal Management Program Amendment

Essential Fish Habitat Assessment Alaska Coastal Management Program Amendment

This assessment of Essential Fish Habitat (EFH) for the proposed action to approve a program amendment to the Alaska Coastal Management Program (ACMP) is being provided to the National Marine Fisheries Service (NMFS) by the Office of Ocean and Coastal Resource Management (OCRM) in conformance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The North Pacific Fishery Management Council has amended its five Fishery Management Plans accordingly to designate EFH necessary to support federally-managed fisheries in the Gulf of Alaska and the Bering Sea/Aleutian Islands. The MSA in turn requires federal agencies to consult with NMFS on all proposed actions permitted, funded, or undertaken by the agency that may adversely affect EFH.

Proposed Action

In 2003 the State of Alaska adopted legislation and regulations that resulted in a comprehensive set of changes to the federally-approved ACMP. The overall purpose of the amendment was to improve the State's consistency review process both in timing and predictability and thereby reduce duplication of permit review. Legislative actions included: the elimination of the original Program's Coastal Policy Council and transfer of its duties to the Alaska Department of Natural Resources (DNR); replacement of the current statewide standards and coastal district plans with standards and local enforceable policies that were considered less susceptible to subjective interpretation and non-duplicative of existing requirements; and clarification that matters regulated or authorized by state or federal law were not subject to local enforceable policies, unless the policy relates specifically to a matter of local concern. Details of the program amendment can be found in the Final Environmental Impact Statement (FEIS) posted on OCRM's website at <http://coastalmanagement.noaa.gov/pcd/up.html> and the Alaska Coastal Management Program's website at <http://www.alaskacoast.state.ak.us>.

Several program changes have been highlighted for this assessment because of their potential to have a direct, indirect, or cumulative effect on EFH. They include: significant revisions to policies for mining, habitat, and mitigation; changes to the consistency review process involving matters regulated by the Department of Environmental Conservation; and the diminished level of involvement by coastal district governments in the federal consistency review process.

Background on Proposed Changes Having the Potential to Effect EFH

Elimination of the mining and mineral processing standard

The mining and mineral processing standard, pertaining mainly to hard rock and placer mining has been removed as a use subject to the ACMP, and replaced with a narrower standard that addresses sand and gravel extraction in barrier islands and saltwater areas. The State has indicated that existing state and federal law and regulations are sufficient to address any environmental impacts from mining and mining activities that were originally covered by the state and district standards.

The effect of the original mining standard was to ensure that mining activities either taking place in the State's coastal zone, or having effects on the State's coastal resources would have to be "regulated, designed and conducted" so that it met all of the other standards in the State's coastal program, including the state's habitat and subsistence standards, and any district program policies that included mining policies. Under the CZMA and its federal consistency provisions, this included mining activities that occurred on federal lands, if they affected the State's or a district's coastal resources. With the removal of mining as a specific use of concern to the ACMP, while other state and federal laws may apply to mining-related activities, federal agencies are no longer required to ensure that their direct mining activities or permits are in compliance with state and district coastal standards.

Three federal permits are required for conducting mining activities in Alaska: the U.S. Environmental Protection Agency's National Pollution Discharge Elimination System permit for discharge of water into stream, river, wetland, or any other natural body of water; the U.S. Army Corps of Engineers' Clean Water Act Section 404 and general permits for activities in wetlands and River and Harbors Act Section 10 permits for any structure or work that could obstruct traditionally navigable waters; and an ESA section 7 consultation and authorization from the appropriate land management agency, such as the U.S. Forest Service or Bureau of Land Management if a project is on federal lands. None of these federal permit programs include policies that are specific to local district resources or issues.

In terms of mining on state lands, the removal of mining from the ACMP standards will have a similar effect. While general state laws will continue to apply to mining-related activities, previously, mining activities themselves were required to be consistent with the State's coastal standards and district program policies. Some district programs had specific mining policies, many of which included being involved in the siting and planning process. These assurances have been removed.

The State offers several approaches to district programs in order for them to compensate for the loss of mining as a use subject to the ACMP. First it suggests that districts may address mining-related activities through other standards such as utility routes and facilities, transportation routes and facilities, energy facilities, or subsistence, and district enforceable policies approved under 11 AAC 114. Yet the State has changed several of these standards, making it unclear whether the redundancy that led to the removal of the original mining policy still exists. Secondly, the State has established new requirements for the development of district plans under 11 AAC 114 that may make it difficult for a district to include enforceable policies in its plan that addresses mining-related activities. Ultimately, the districts that currently have mining standards in place will lose their ability to apply them and may experience difficulty adopting other compensatory standards.

Changes to the habitat policy

The State made several significant changes to the habitat standards. The largest change is the

removal of introductory language to the section requiring that each type of habitat be managed to “maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources.” The standard was felt to be “vague and unrealistic...and contained no level of predictability as to how the test was to be applied.” The State rewrote the habitat standard so that, with the exception of rocky islands and sea cliffs and barrier islands and lagoons, each type will now be managed for very limited habitat values. (See Section 5.3.2.12 in the EIS for a description of the changes that were made to the remaining eight habitat areas).

As part of the overall amendments to the ACMP, the State is placing a new emphasis on the other existing state resource agencies’ authorities and their coverage of habitat management, including the components of habitats that contribute to biological productivity. Those state resource agency authorities are applicable throughout Alaska. Besides the state’s Water Quality Standards, handled and enforced separately through the Department of Environmental Conservation, the most relevant statutes pertaining to the protection of fish and wildlife habitat include the Fishway Act and the Anadromous Fish Act.

In addition, the State has built into the ACMP several mechanisms for designating “important habitats” to account for any resource that may be inadequately addressed through other state or federal laws or regulations. The districts can identify habitats that are of local importance and significance (i.e., as a matter of local concern) and develop additional enforceable policies to further manage those habitats. In addition, the State can designate important habitats on a case-by-case basis during a project’s consistency review. Important habitats are part of the habitat standard and bolster the general habitat standard by managing those “important habitats” to “avoid, minimize, or mitigate significant adverse impacts of the special productivity of the habitat.” With the exceptions noted above, the only time a particular habitat receives more holistic review is if it is designated an “important habitat.” Finally, upland habitat was dropped as a habitat directly subject to management, although a rather cumbersome process is provided for the designation of uplands as important habitat.

Changes to the mitigation policy

Changes have been made to the state’s sequencing process to avoid, minimize, or mitigate adverse impacts to affected coastal resources from development projects. The mitigation policy is an element of the habitat, utilities, and transportation standards. As described in the previous section on habitat, the original standard was the “maintain or enhance” requirement. The process of “to avoid, minimize, or mitigate” involves avoidance of impacts where practicable, minimization of impacts where avoidance is not practicable, and compensating for impacts to the extent appropriate and practicable. According to the state’s mitigation policy, deference will be given to federal mitigation requirements.

In the course of modifying this requirement, the State further clarified that the current mitigation standard does not involve monetary compensation (or fee in lieu) of impacted resources, nor does the standard require a no net loss of coastal resources. Further, the terms “restore” and “replace”

impacted coastal resources were replaced with the term “rehabilitate.” It was determined that rehabilitation, or the return of at least some ecosystem function and some original species, would be a more realistic goal for large-scale projects.

Exclusion of Alaska Department of Environmental Conservation (DEC) Permits and Authorizations

In a change to the ACMP consistency process, the Districts may no longer adopt policies that address any air, land, or water quality issue potentially regulated by DEC. HB 191 mandates that issuance of DEC permits, certifications, approvals, and authorizations in and of themselves establishes consistency with the ACMP for those activities of a proposed project subject to those permits, certifications, approvals, and authorizations. In other words, activities regulated by DEC will no longer be reviewed for consistency with other statewide standards. While HB 191 has deliberately and explicitly carved DEC out of the consistency process, the statutory and regulatory provisions of DEC for air, land, and water quality are still incorporated into the ACMP which is a requirement for approvability under the CZMA.

Changes to District plan guidance

A hallmark of the ACMP has been the balance in decision-making between the state and district programs and the strong representation by districts on the now defunct Coastal Policy Council. Decision-making has been centralized at the state level and the end effect has been to greatly reduce the ability of coastal districts to manage coastal resources and uses. In addition, many of the state-level changes to policies can no longer be easily addressed at the district level. This is because the new process will constrain the districts from setting policies and impose a cumbersome process for designating important habitats and identifying matters of local concern.

Essential Fish Habitat Affected by the Proposed Action

EFH is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” The rule triggers mandatory consultations by federal agencies on proposed actions that may adversely affect EFH for federally-managed species so that NMFS can suggest measures for conserving and enhancing the habitat necessary for these species to carry out their life cycles. An adverse effect on EFH is any impact that reduces the quality and/or quantity of EFH. Adverse effects may be site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. In a related effort, Fishery Management Councils (FMCs) are encouraged to identify Habitat Areas of Particular Concern within EFH based on four considerations: ecological importance, sensitivity to environmental degradation, susceptibility to stress from development, and/or rarity.

Five FMPs exist for fisheries in Alaska. They cover groundfish in the Gulf of Alaska, groundfish in the Bering Sea and Aleutian Islands (BSAI), crab in the BSAI, and salmon and scallops statewide. Those relating to the proposed action would include the shallow water flatfish component of the groundfishery in GOA and BSAI, crab in the BSAI, and statewide salmon and

scallop plans.

As elsewhere, EFH in Alaska is closely interconnected with other aquatic and terrestrial environments. While the NMFS EIS issued in 2005 mainly reexamined the effects of fishing on EFH, there was also a section included on the diverse array of non-fishing activities that may adversely affect EFH in the State. Appendix G is instructive because it demonstrates the degree of potential overlap that exists between these types of activities and the scope of the amended portions of the ACMP that are the subject of this EFH assessment. The broad categories of these activities include, but are not limited to mining, dredging, fill, impoundment, discharge, water diversions, actions that contribute to nonpoint source pollution and sedimentation, introduction of potentially hazardous materials, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. These are activities that would be subject typically to a variety of regulations and restrictions designed to help avoid or minimize adverse effects to EFH under federal, state, and local laws.

The activities have been grouped into four systems in which the activities usually occur: upland, river or riverine, estuary or estuarine, and coastal or marine. Each of these systems contains important habitat types that support one or more functions in the life cycle of managed species. For each activity, the processes or mechanisms that may cause the adverse effect and what that potential effect on EFH may entail are described. Finally, this section of the document contains generic lists of conservation measures that may be appropriate for each activity to avoid, offset, or mitigate impacts to EFH.

According to NMFS, the upland activity posing the greatest potential threat to aquatic habitat is urban and suburban development. Adverse impacts can range from physical and biological changes to changes in hydrology and water quality. Land runoff and particularly runoff from impervious surfaces is the most widespread source of pollution in aquatic systems. Road building and maintenance can be another significant source of adverse impacts on aquatic systems.

Notable activities occurring in riverine systems with the potential to adversely impact EFH includes mining, organic and inorganic debris, dam operations, and commercial and domestic water use. Mining can be surface or underground mining. Materials being removed can be sand and gravel, metals, minerals, or coal. Potential impacts from mining include increased erosion of habitat from changes to hydrology, removal of substrates that serve as habitat for fish and invertebrates, habitat conversion, and harmful levels of turbidity. The placement of tailings and leaching of extracted chemicals can be a particularly serious threat to EFH. Naturally occurring organic debris contributes to habitat complexity and its removal can alter the ecological conditions of EFH. Land and ocean-based sources of inorganic debris can cause a range of impacts. Dams impede migration and affect flow rates and current patterns and thermal conditions. Increasing demands for water will lead to greater reliance on water diversions and impoundments with attendant impacts on habitat structure and function.

Estuarine activities with the potential to adversely affect EFH include: dredging and the disposal of dredged material; vessel operation and the infrastructure needed to support marine

transportation; overwater structures; structural approaches for flood control and shoreline protection; installation of utility lines, cable, and pipelines; and the commercial use of habitat.

Activities of potential concern in coastal and marine systems range from point-source discharges of municipal sewage or storm water to oil and gas exploration, development, and production. The most significant pollution threat to marine waters in Alaska is the atmospheric transport and deposition of persistent organic pollutants from remote sources.

There are over 100 federally-managed species in Alaska that are dependent on EFH for at least a portion of their lifecycle. Table 1 contains a list of the principle target species that may be affected by the proposed action due to potential effects on EFH. More detailed information on these species can be found in the individual EFH assessment reports for the various fisheries included in the final EFH EIS for Alaska. More general information from that source is excerpted below. Loss of prey and prey habitat also can have an adverse effect on EFH, although the effect of the proposed action on forage fish and other species is beyond the scope of this assessment.

Salmon fishery: While life history information is limited for many species, there is a significant body of information available for the five species of salmon (pink, chum, sockeye, chinook, and coho) and steelhead trout that occur in Alaska. With some important variations, all species have a similar appearance and anadromous life history (EFH FEIS 2005). Freshwater EFH for Alaska's salmon fisheries include a diverse array of accessible aquatic habitats (e.g., streams, lakes, ponds, wetlands) throughout the State. Marine EFH used by Pacific salmon species includes tidally influenced and estuarine areas to the limits of the U.S. Exclusive Economic Zone. Virtually all coastal waters in the State provide important habitat for anadromous fish and many other essential waterbodies have yet to be surveyed.

Groundfish fishery in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI): With some exceptions, flatfish under these two FMPs are managed in two groups: as "deep water flatfish" and "shallow water flatfish." The latter group is mainly relevant to the proposed action. In the GOA, shallow water flatfish include northern and southern rock sole, yellowfin sole, starry flounder, butter sole, English sole, Alaska plaice, and sand sole. The most abundant flatfish species in the Bering Sea and Aleutian Islands ground fishery is the yellowfin sole, with the center of its distribution on the eastern Bering Sea shelf. Spawning occurs primarily in shallow water at depths of less than 30 meters. Larvae and juveniles remain in shallow areas and move to the continental shelf as adults before returning to reproduce. Alaska plaice is the second most abundant and commercially important of the flatfish species. Larval development is thought to occur in shallow waters.

BSAI King and Tanner Crab Fishery: King and tanner crab species migrate seasonally to shallow inshore areas for reproduction and molting. Specifically, this habitat provides critical cover to protect crabs during these sensitive life history stages.

Weathervane Scallop Fishery: Weathervane scallops are found from intertidal waters to depths

of 300 meters, although abundance is greatest between 45 meters and 130 meters on beds of mud, clay, sand, and gravel.

Table 1. Fisheries management plans and managed species affected by the federal action

Common Name	Scientific Name	Distribution
Salmon Fisheries FMP		
Pink	<i>Onchorhynchus gorbuscha</i>	Inland rivers to off shelf
Chum	<i>O. keta</i>	Inland rivers to off shelf
Sockeye	<i>O. nerka</i>	Inland rivers to off shelf
Coho	<i>O. kisutch</i>	Inland rivers to off shelf
Chinook	<i>O. tshawytscha</i>	Inland rivers to off shelf
Steelhead trout	<i>O. mykiss</i>	Inland rivers to off shelf
BSAI and GOA Groundfish FMPs		
Shallow water flatfish		
Yellowfin sole	<i>Limanda aspera</i>	spawn in nearshore areas
Starry flounder	<i>Platichthys stellatus</i>	spawn in nearshore areas
Butter sole	<i>Isopsetta isolepis</i>	spawn in nearshore areas
English sole	<i>Parophrys vetulus</i>	spawn in nearshore areas
Alaska plaice	<i>Pleuronectes quadriterculatus</i>	spawn in nearshore areas
Rock sole	<i>Lepidopsetta polyxstra</i>	< 250 m
Flathead sole	<i>Hippoglossus elassodon</i>	larvae in shallow areas
Others		
Pacific cod	<i>Gadus macrocephalus</i>	shore to 500 m
Atka mackerel	<i>Pleurogrammus monopterygius</i>	spawn in shallow water
Sablefish	<i>Anoplooma fimbria</i>	juveniles in nearshore bays
Yelloweye rockfish	<i>Sebastes ruberrimus</i>	nearshore
BSAI King and Tanner Crab FMP		
Red king crab	<i>Paralithodes camtschatica</i>	shallow inshore areas
Blue king crab	<i>P. platypus</i>	shallow inshore areas
Golden king crab	<i>Lithodes aequispina</i>	shallow inshore areas
Snow crab	<i>Chionoecetes opilio</i>	shallow inshore areas
Tanner crab	<i>C. bairdi</i>	shallow inshore areas
Weatherwane Scallop FMP		
Weatherwane scallop	<i>Patinoplectin caurinus</i>	intertidal to 150 m

Habitat Areas of Particular Concern

The FEIS for EFH Identification and Conservation in AK issued in April 2005 also evaluated an approach for identifying Habitat Areas of Particular Concern (HAPC), leaving the redefinition of

HAPCs to a follow on environmental assessment. Since this process is still underway, effects of the ACMP program amendment on HAPCs has not been specifically addressed in this EFH assessment.

Potential effects of change to the mining and mineral processing standard on EFH

While more than 75 percent of the federal land in Alaska is closed to mining because it is located in federally-protected areas, there remain about 49.6 million acres of federal land open to mineral entry. There are 95.9 million acres of state land open to mineral entry or an area roughly equivalent to the state of California. Some of the major minerals mined in Alaska include zinc, gold, silver, lead, copper, and coal. As an industry, mining has the capacity to result in significant direct and indirect adverse impacts on EFH. Large-scale mines and the secondary forms of development that must be in place to sustain these operations can modify or eliminate fish and wildlife habitat (including wetlands and tundra), alter terrain and disrupt natural drainage patterns, and degrade air and water quality. While some level of reclamation may be possible once a mine is exhausted, the environment can never be returned to a pristine state and varying conditions of habitat degradation or loss can be permanent.

There are a number of large-scale mining projects in operation or under development in Alaska. Most are located on or near the coast, with mining activity found predominantly in the southeast region of the state and along the Bering Sea coast. The State is poised to accommodate additional mining proposals. Indeed, a number of changes to the ACMP were intended to streamline the review of mining project permits and authorizations coordinated by the State's large mine project team. The State DNR website alludes to the complex nature of these projects and their potential for environmental damage both during and after the life of a mine.

In short, mining will continue to be a regulated activity in the State's coastal area under state and federal law. And while the State's mining and mineral processing standard has been eliminated, the mining standard under the original ACMP simply referred to other ACMP standards, although the State was not specific regarding which of these standards would apply. Because all major activities to be conducted in coastal areas are envisioned to have some federal involvement in terms of permitting authorities mentioned above, individual projects will be required to undergo an EFH consultation. However, smaller-scale projects that don't require a federal license or permit could lead individually and cumulatively to adverse impacts to EFH if efforts are not made to apply conservation measures such as those recommended by NMFS for avoiding or minimizing impacts to habitat.

Potential effects of changes to the habitat policy on EFH

In general, the changes to the habitat policy make the State and districts more reliant on existing state laws for the protection of coastal EFH. The two state laws, the Fishway and Anadromous Fish Acts, are narrow in scope and lack associated regulations. Nonetheless, these laws, in conjunction with federal environmental statutes, will become the primary regulatory programs on which to protect EFH. However, there are some indications that the implementation of the

various changes to the habitat policy will not be necessarily straightforward or ultimately as protective for aquatic habitat. For example, the districts' ability to designate important habitat will not be particularly straightforward and local governments, which may provide more insight or a closer review of permitted activities that will impact coastal resources, may lose their opportunity to provide meaningful input. The State has, however, left open the possibility for both the State and districts to designate "important habitats" for each of these types of habitat, if they can be demonstrated to be of local importance. The elimination of upland habitat as a habitat directly subject to management could have an adverse impact on EFH if the State's ability to adequately control upland development and associated nonpoint sources of pollution were to be affected. So although additional state and federal laws will also continue to apply to habitat protection, it is not clear whether this and other changes will leave the ACMP with the same level of protection that existed previously for EFH.

Potential effects of changes to the mitigation policy on EFH

It does appear that in the course of modifying the policy to make it more realistic, the standard for the restoration and replacement of habitat has been weakened. Replacing the terms "restore" and "replace" impacted coastal resources with the less stringent "rehabilitate" could lead to the gradual decline in environmental quality in the state's coastal zone. Also, the program changes that relate to the ability of district programs to apply the state mitigation standard have been greatly restricted. This will reduce the opportunity for local influence in shaping development proposals that could have an impact on the quality and extent of EFH. Nonetheless, because federal mitigation requirements will likely continue to apply, the changes to the mitigation policy are not likely to adversely affect EFH for large-scale projects.

Potential effects of the DEC carve out on EFH

While the DEC carve-out is a change in the ACMP consistency process, it is not apparent at this point whether the DEC carve-out will affect the operation of the ACMP policies or significantly affect the human environment. The single most important process effect of this change is that districts may no longer adopt policies that address DEC authorities. While these process changes limit the scope of district policies, the DEC policies and standards remain as the air and water quality standards of the ACMP. The DEC permitting process still includes a public review and comment period. Interested members of the public, including coastal districts can comment directly to DEC on any concerns with a proposed activity. Districts also have the ability to provide comments to DEC on DEC-coordinated consistency reviews and can be afforded due deference by the reviewing agency in accordance with the process described on pages 136-138 of the ACMP program submission (see Appendix C of the DEIS).

In addition, the DEC policies will still be applied to federal lands and the OCS through the CZMA federal consistency review process. Moreover, having the DEC standards be the only air and water quality standards for the ACMP complies fully with CZMA section 307(f)(16 U.S.C. 1456(f)), that water and air pollution control requirements developed by the federal government or by any State or local government shall be the water and air pollution control requirements

applicable to a state's coastal management program. Thus, it is not apparent that this provision will result in a change in the level of environmental protection afforded by the ACMP.

Potential effects of changes to the District plan guidance on EFH

There are several possible repercussions to stem from this arrangement. The first is that the decision-making process will not be as robust since there could be less local knowledge of resources and environmental conditions being factored into land use decisions. With fewer district policies, the scope of local decision-making will be curtailed and there is the potential that state laws will not adequately compensate for those omissions. The incentive for local participation in the ACMP may gradually wane, leaving district governments and citizens less engaged in monitoring projects or activities with the potential to impact EFH. Should one or more of these circumstances occur, it is possible to conclude that under the amended ACMP, the level of protection afforded to EFH may not be as strong as it was before.

These possible repercussions, however, are not necessarily inevitable consequences of centralization at the state level, and there will still be opportunities for local participation in the ACMP at the district level. The changes to district plan guidance therefore are not likely to adversely affect the quality or extent of EFH.

Cumulative Impacts

In general, the cumulative impacts of the proposed action, when added to past, present, and reasonably foreseeable future actions, are difficult to analyze in a detailed manner because the impacts of other actions are largely dependent on future, discretionary actions. For example, the Alaska State Legislature recently passed a bill (Senate Bill 110, passed May 10, 2005) that directs DEC to seek and assume primacy for the NPDES wastewater permit program established in the Clean Water Act. If approved by the EPA, this assumption of the NPDES program could potentially result in significant effects, either positive or adverse, to water quality. Nonetheless, any attempt to factor this potential development into a cumulative effects analysis would be speculative, since DEC has not submitted an application at this time. (DEC plans to submit a primacy application to EPA for their approval before July 1, 2006 and plans to assume primacy by June, 2007 if approved by EPA). Similarly, the effects of future development projects affecting the coastal zone will depend on future discretionary actions that are largely speculative and therefore not susceptible to meaningful analysis.

Conclusion

In conclusion, depending on how the proposed amendments to the ACMP are implemented, the amendments could potentially result in some adverse effects to EFH, but such effects are not inevitable, and the amendments could result in no change to the level of environmental protection of EFH.

References

National Marine Fisheries Service (NMFS). 2005. Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska and Appendices F and G.

NMFS. 2004. Preparing Essential Fish Habitat assessments: a guide for federal action agencies. 34 pp.

NMFS/Department of the Interior Minerals Management Service. Essential Fish Habitat Programmatic Consultation Document. 2003. Attachment A to Draft Environmental Impact Statement prepared by the Minerals Management Service for Cook Inlet Planning Area Oil and Gas Lease Sales 191 and 199 from the Outer Continental Shelf Oil and Gas Leasing Program: 2002-2007. 46 pp.

NMFS Fishery Management Plans for the Five Relevant Alaska Fisheries. 2005.